

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2679 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VASANTLAL MANEKLAL MODI

Versus

DISTRICT MAGISTRATE

Appearance:

MR VIJAY H PATEL for Petitioner

MR. UR BHATT, LD. APP.for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 09/08/96

ORAL JUDGEMENT

By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 21/3/1996 rendered by the respondent no.1 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Ac, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds on which the impugned order of

detention has been passed appear at Annexure-C to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his associates has been carrying on criminal and anti-social activities of storing and selling country liquor and following prohibition offences have been registered in the Ankleshwar Police Station against him :-

- 1) III-1428/95 U/Ss.66B,65A,E,116, 81 of Bombay Prohi.
24/10/1995 Act,
39 bottles of country liquor - Bwear-10
pending in Court. Court has released
petitioner on bail of Rs.1,000/- with
personal bond in the like sum.
- 2) III-1506/95 U/Ss.66B, 65A,E, 81 of Bombay Prohi.Act
8/11/1995 95 bottles of country liquor,
Pending in Court. Court has released the
petitioner on bail of Rs.700/- with
personal bond in like sum.
- 3) III-1/96 U/Ss.66B, 65A, E,81 of Bombay Prohi.Act
3/1/1996 297 bottles of foreign liquor amounting
to Rs.17,800/-.
Pending in the Court. The Court has
released the petitioner on bail of
Rs.1,000/- with personal bond of same
amount.
- 4) III-111/96 U/Ss. 66B,65A & 65E of Bombay Prohi.Act
22/1/1996 12 bottles of foreign liquor amounting to
Rs.2400/-.
Pending in the Court. The Court has
released the petitioner on bail of
Rs.1,000/- with personal bond of same
amount.

It may be noted that over and above, making a statement of the bail application in each of the aforesaid cases and the order of bail passed by the Court thereon reference of such bail application and orders passed thereon has also been made in the description of the aforesaid 4 complaints. It may also be noted that the detaining authority has relied upon the bail application and the order of bail passed in all the aforesaid cases for its subjective satisfaction that even after the bail the petitioner has been indulging in the commission of offences and criminal activity.

3. Five witnesses have been examined and reference has been made to the statements of such witnesses for

saying that the petitioner has been indulging in the anti-social and illegal activities of dealing in foreign liquor and for carrying on such activity he is having gang of head strong persons (Gundas). The statements are dated 5/2/1996, 7/2/1996, 8/2/1996, 13/2/1996 and 13/2/1996. The witnesses have asserted that they were threatened for interfering with the petitioner's activity. No complaint could be filed by any of the witnesses on account of the fear generated by the petitioner. It is under the aforesaid circumstances noted in the grounds of detention that it has been asserted that the petitioner's anti-social activity tends to obstruct the maintenance of public order and that on account of criminal and anti-social activities of the petitioner public order is likely to be adversely affected in as much as the activity is injurious to public health and causes adverse effect on the future generation. It is the aforesaid order of detention which has been under challenge before this Court.

4. I have heard the learned advocate for the petitioner and Ld. AGP for the State. The petitioner has challenged the aforesaid order of detention as also the continued detention on number of grounds inter-alia on the ground that the petitioner has not been supplied with the copies of the bail orders with reference to the case shown at serial no. 2 - C.R. No. III-1506/95 registered at Ankleshwar Police Station. According to the petitioner the said documents are vital and relevant for the purpose of making effective representation, since the detaining authority has relied upon the same. Non-supply of the bail orders has violated the petitioner's fundamental rights guaranteed under Art. 22 (5) of the Constitution of India for making effective representation and, therefore, continued detention of the petitioner has become illegal.

5. Reliance has been placed on the decision of the Apex Court in the case of Abdul Sathar Ibrahim Manik v. Union of India reported in AIR 1991 SC 2261. After considering and making a reference to a number of previous decisions of the Court following conclusions were set down (see page 2270 of the citation) :-

"(1) A detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detenu was already in custody.

(2) When such awareness is there then it should

further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher Court.

- (3) If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.
- (4) Accordingly the non-supply of the copies of bail application on the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same.
- (5) When the detaining authority has merely referred to them in the narration of events and has not relied upon them, failure to supply bail application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. Only when the detaining authority has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents may, in certain cases depending upon the facts and circumstances amount to violation of Article 22(5) of the Constitution of India. Whether in a given case the detaining authority has casually or passingly referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the Court.
- (6) In a case where detenu is released on bail

and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu."

6. A reference has been made to the aforesaid 6th conclusion to bring home the ground of challenge in this case. Reference has also been made to pages 2266 and 2267 of the citation. There the Apex Court has considered its earlier decision in M.Ahmed Kutty v. Union of India reported in (1990 (2) SCC at page 1 where the contention was that the bail application and order granting bail which were relied upon by the detaining authority were not supplied to the detenu and, therefore, the detention order was illegal. There the grounds of detention mention that the detenu was remanded to judicial custody and was subsequently released on bail and, therefore, the documents were in fact were placed before the detaining authority, who relied upon the same. It was, therefore, held that non-supply of these relevant documents to detenu disabled him to make effective representation and that was held to be violation of Art. 22(5) of the Constitution. The relevant observations quoted from Ahmed Kutty's case (supra) at page 2267 would read as under :-

"If in the instant case the bail order on condition of the detenu's reporting to the customs authorities was not considered the detention order itself would have been affected. Therefore, it cannot be held that while passing the detention order the bail order was not relied on by the detaining authority."

7. In reply Mr. U.R. Bhatt, Ld. AGP referred to another decision of the Apex Court in the case of M. Mohamed Sulthan v. The Joint Secretary to Government of India & ors. reported in JT 1990 (4) SC p. 41. It is no-doubt true that M. Ahmed Kutty's case (supra) has been referred to in this decision. However, the same was distinguished on facts which would indicate that the applications submitted by the petitioner before the Additional Chief Metropolitan Magistrate for relaxing the conditions for his release on bail and the order dated 31/10/1989 passed by the learned Addl. Chief Metropolitan Magistrate on the said application whereby the

conditions on which the petitioner was released on bail were relaxed were held to be not material documents. The failure to produce the same before the detaining authority would not vitiate the order of detention and, therefore, failure to supply the copy would not also vitiate the order of detention. It has been observed as under in para. 6 :-

"..... In the instant case the petitioner cannot derive any assistance from M. Ahmedkutty's case because the order dated October 6, 1989 with regard to grant of bail subject to conditions has been duly considered by the detaining authority, as would be evident from the grounds of detention. The application for relaxation of the conditions of bail submitted by the petitioner and the order dated October 31, 1989 relaxing the conditions of bail passed by the Addl. Chief Metropolitan Magistrate on the said applications were not material documents and were not required to be considered by the detaining authority. The non-consideration of the same by the detaining authority would not therefore, impair the satisfaction arrived at by the detaining authority and would not vitiate the order of detention. For the same reason the non-supply of the copies of the same to the petitioner would not result in denial of the right of the petitioner to make a representation under Art. 22(5) of the Constitution."

8. In my opinion the decision in Shri M. Mohamed Sulthan's case (supra) can hardly have any application to the facts regarding non-supply of the bail order itself on which reliance has been placed by the detaining authority impairing the right of the petitioner in making effective representation in so far as the present case is concerned. On the contrary, facts here run parallel to the facts in M. Ahmedkutty's case (supra) from which the aforesaid 6th conclusion has been drawn in Abdul Sathar Ibrahim Manik's case (supra).

9. In above view of the matter the continued detention of the petitioner cannot be said to be legal.

10. There are other grounds of challenge levelled against the order of detention. However, in view of the fact that the petitioner would succeed on the aforesaid ground of challenge to the continued detention, it would not be necessary to deal with the other grounds. Hence, following order is passed :-

The continued detention of the petitioner is held to be illegal and is hereby put to an end. The petitioner-detenu is, therefore, directed to be set at liberty forthwith if he is not required to be detained in any other case. Rule made absolute.

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